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In re Application of	:	DECISION
Allen W. THORPE et al	:	
Application No.: 09/463,001	:	
PCT No.: PCT/US98/14775	:	
Int. Filing Date: 16 July 1998	:	ON PETITION
Priority Date: 17 July 1997	:	
Attorney's Docket No.: 7387	:	
For: THERMAL PROTECTIVE STRUCTURES	:	UNDER 37 CFR 1.47(a)
AND METHODS OF MAKING THEM	:	

This decision is in response to applicant's "PETITION UNDER 37 CFR 1.47(a) AND STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF NONSIGNING INVENTOR" filed on 30 November 2000 that seeks the acceptance of the application without the signature of the inventor Malkit S. Deogon.

BACKGROUND

On a decision dated 30 May 2000, this office dismissed applicant's 37 CFR 1.48(b) petition filed on 18 January 2000. The decision stated that the requirements under 35 USC 371(c)(4) would first have to be met before applicant could file a petition under 37 CFR 1.48(b) in the national stage application.

On 30 November 2000, applicant filed the present petition under 37 CFR 1.47(a). Filed with the present petition were, inter alia: (1) a "DECLARATION AND POWER OF ATTORNEY" executed by inventors Allen W. Thorpe, Edward W. Taylor, Jr., and Rubin Feldman on their behalf, as well as on the behalf of non-signing inventor Mr. Malkit S. Deogon; (2) a "PETITION UNDER 37 CFR 1.47(a) AND STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF NONSIGNING INVENTOR" executed by Mr. J Philip Parker.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

Section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.), **Proof of Unavailability or Refusal**, the relevant sections states, in part:

"...Where a refusal of the inventor to sign the application paper is alleged, the circumstances of the refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Before a refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings and oath or declaration) to the nonsigning inventor for signature.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration."

Although the statements from Mr. Polster's declaration appear to support that petitioner had made a *bona fide* attempt to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing joint inventor Mr. Deogon, these statements alone do not provide *prima facie* evidence that these papers were sent and that Mr. Deogon refused to sign them. Mr. Polster has not provided proof to corroborate his statements as indicated under 37 CFR 1.47.

Moreover, Mr. Polster states that on July 25, 2001 he sent Mr. Deogon a letter requesting that he sign the declaration and that according to Federal Express tracking records, Mr. Deogon received and signed for the package. Further, Mr. Polster states that he sent Mr. Deogon another letter on October 2, 2001 by Federal Express expressing the urgency to sign the declaration. However, Mr. Polster has not submitted copies of documentary evidence to support his statements such as certified mail return receipt of the above letters, or cover letter instructions, and etc.... that show that the proper papers were sent to Mr. Deogon and that he refused to sign. Further, Mr. Polster makes reference to conversations between Mr. Deogon and Mr. Feldman. However, applicants have not filed a statement by Mr. Feldman attesting to the discussion and detailing the time and place of the call.

Consequently, the current record does not support the premise that Mr. Deogon's conduct constitutes refusal because no evidentiary documents have been submitted to show that a *bona fide* attempt was made and that Mr. Deogon refused to sign the required papers.


Regarding item(4), Allen Thorpe, and Edward W. Taylor, Jr. have not signed the declaration on behalf of Mr. Deogon. If one inventor signs on behalf of a non-signing inventor, then all the inventors must sign on behalf of the non-signing inventor. See MPEP 409.03. In addition, the declaration is defective because it does not identify each inventor. In this instance, inventor Deogon is not identified on the declaration. SEE MPEP 602.


DECISION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration of the merits of the petition under 37 CFR 1.47(a) is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)."

Any further correspondence with respect to this matter should be addressed to the Commissioner for Patents, Office of PCT Legal Administration, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office


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